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Senate

The Senate met at 11 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, infinite sovereign Lord, our lawmakers face complex issues that challenge the best of human thoughts and actions. As You gave insight to King Solomon, impart wisdom to Your servants in the Senate. Help them to believe that You are real and relevant and a ready helper for all their challenges. May they recognize their need for divine intervention and develop the necessary humility to seek it. Lord, shower them with wisdom and strength far beyond their own to face these critical days. In their worries and cares, give them the joy of knowing You are with them. We pray in the Name of Him who is all wise, all powerful, and all loving. Amen.

PLEDGE OF ALLEGIANCE

The Honorable MARK UDALL, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 13, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. UDALL of New Mexico thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader.

SCHEDULE

Mr. REID. Mr. President, following leader remarks, we will begin consideration of S. 1390, the Department of Defense authorization bill. At 4:30 today, the Senate will turn to executive session to consider the nomination of Robert Groves to be the Director of the Census and debate the nomination for 1 hour.

At 5:30 p.m., the Senate will proceed to a cloture vote on the nomination. Under an agreement reached last week, if cloture is invoked, all postcloture debate time will be yielded back and the Senate will immediately proceed to a vote on confirmation of the nomination. I expect that if cloture is invoked, the vote on confirmation would be a voice vote.

Upon disposition of the nomination, the Senate will resume consideration of the Department of Defense authorization bill. As previously announced, there will be no rollcall votes after 2:00 or so tomorrow afternoon.

HEALTH CARE AND THE SOTOMAYOR NOMINATION

Mr. REID. Mr. President, the coming weeks are a critical time, not just here in the Congress but in our country. This month we will work to stabilize our broken health care system and lower costs for the middle class. This

month we will also discuss, debate and, I am confident, ultimately confirm President Obama's outstanding nominee, Judge Sonia Sotomayor.

These goals require both sides to work together. I repeat. These goals require both sides to work together. Each will require all of us to work in good faith. If we are to do what our country needs us to do, we must work as partners, not partisans.

We have said all along we strongly prefer to fix health care as one collaborative body, not as two competing parties. I had a positive meeting with four senior Republican Senators about the road ahead for health care, and it is health care reform we talked about. We finished the meeting and there was a general agreement we needed health care reform, and it should be done on a bipartisan basis, not resort to what we call reconciliation, which requires only a simple majority.

I appreciate very much the commitment of those four Republicans to getting this done. I look forward to more Republicans showing the same commitment.

The Finance and HELP Committee chairmen are working tirelessly to mark up the health care bills. Our goal remains the same. We would like to see those bills on the floor in July. I hope our Republican colleagues will work with us to achieve that goal.

Just as our commitment to a bipartisan plan has not changed, neither have our principles about that plan: lowering skyrocketing costs, and bringing stability and security back to health care. We are committed to passing a plan that protects what works and fixes what is broken. A plan that ensures that if you like the coverage you have, you can keep it.

We will make sure people can still choose their own doctors, hospitals, and health plans. Americans need affordable health care they can count on. Too many families live just one illness or one accident or one pink slip away

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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from financial ruin. The cost of inaction is too great and the status quo is no longer an option. The status quo simply is not something we need to look to.

On another subject, today is a historic day in America. Right now, they are having opening statements in the Senate Judiciary Committee, Democrats and Republicans, regarding Sonia Sotomayor. She will, later today, testify before that committee as President Obama's nominee for the highest Court in our country. As we all know, she is the first Hispanic American to do so.

Judge Sotomayor has a wide range of experience, not just in the legal world but in the real world. Her understanding of the law is grounded not only in theory but also in practice. Her record and qualifications are tremendous. She has worked at almost every level of our judicial system—as a prosecutor, as a litigator, a trial court judge, and appellate judge.

That is the exact type of experience we need on the Supreme Court. When she is confirmed, she will bring to the bench more judicial experience than any sitting Justice had when they joined the Court.

Judge Sotomayor has been nominated by both Democratic and Republican Presidents. She has been confirmed twice by the Senate with strong bipartisan support. Her record is well known and well respected. We are committed to ensuring that she has a rigorous and reasonable confirmation hearing. We expect both sides to ask tough questions and we expect both the questions and their answers to be fair and honest before she is confirmed.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.

SOTOMAYOR CONFIRMATION HEARINGS

Mr. McCONNELL. Mr. President, today the Senate Judiciary Committee will begin its hearings on the nomination of Judge Sonia Sotomayor to be an Associate Justice on the U.S. Supreme Court. The consideration of a Supreme Court nominee is always a historic event. Since our Nation's founding, only 110 people have served on the High Court, and 10 of those were nominated by George Washington. There are few duties more consequential for a Member of the U.S. Senate than to vote on a Supreme Court nominee.

This particular nominee comes before the Judiciary Committee with a compelling life story. Like so many other Americans before her, Judge Sotomayor has overcome great adversity. In this, she has reaffirmed once again that ours is a nation in which one's willingness to work hard and

apply one's talents are the principal requirements for success. And yet, as we begin these hearings, it is important to remind ourselves that our obligation as Senators under the Constitution's advice and consent clause requires us to do more than confirm someone to a lifetime position on our Nation's highest court based on their life story. Rather, it requires us to determine whether he or she will be able to fulfill the requirements of the oath taken by all Federal judges, that they will, "administer justice without respect to persons, and do equal right to the poor and to the rich, and that [they] will faithfully and impartially discharge and perform all the duties incumbent upon [them] under the Constitution and laws of the United States."

The emphasis here is on the equal treatment of everyone, without respect to person, status, or belief, that everyone in America can expect that when they enter a courtroom, they will not be treated any differently than anyone else. That is what justice is, after all. And that is what Americans expect of our judicial system, equality under the law.

Now, President Obama has made it abundantly clear, as a Senator, as a candidate for President, and now as President, that he has a somewhat different requirement for his appointees to the Federal bench. He has repeatedly emphasized that his "criterion" for a federal judge is their ability to "empathize" with certain groups. That is a great standard, if you are a member of one of those specific groups. It is not so great, though, if you are not. So it might be useful to consider some of the groups who have found themselves on the short end of the "empathy" standard.

First, there are those who rely on the first amendment's right to engage in political speech. Then there are those Americans who want to lawfully exercise their right to bear arms under the second amendment. Next, those who want protection under the fifth amendment's requirement that private property cannot be taken for a public purpose without just compensation, and that it should not be taken for another person's preferred private use at all. Also, there are those who want protection from unfair employment practices under the 14th amendment's guarantee of the equal protection of the law.

I mention these specific groups because Judge Sotomayor has had to handle cases in each of these areas. And looking at her record, it appears the President has nominated just the kind of judge he said he would, someone who appears to have "empathy" for certain groups who appear before her, but not for others.

As I discussed last week, Judge Sotomayor kicked out of court the claims of New Haven, CT, firefighters who had been denied promotions because some minority firefighters had not performed as well as a group of mostly White firefighters on a race-

neutral exam. The Supreme Court reversed her decision in this matter, her third reversal just this term, with all nine justices finding that she misapplied the law. Her treatment of this case, the Ricci case, has been criticized across the political spectrum as "perfunctory" and "peculiar," and it called into question whether her dismissive handling of the firefighters' important claims was unduly influenced by her past advocacy in the area of employment preferences and quotas.

I also spoke last week about provocative comments Judge Sotomayor had made about campaign speech, including her claim that merely donating money to a candidate is akin to bribery. It is her prerogative to make such statements, as provocative as they may be. But it is not her prerogative as a judge to fail to follow clear Supreme Court precedent in favor of her political beliefs. Yet when she had the chance to vote on whether to correct a clear failure to follow Supreme Court precedent by her circuit in this very area of the law, she voted against doing so. Ultimately, the Supreme Court, in an opinion authored by Justice Breyer, corrected this error by her circuit on the grounds that it had failed to follow precedent.

There are other areas of concern.

Judge Sotomayor also brushed aside a person's claim that their private property had been taken in violation of the fifth amendment's "takings clause." As in the Ricci case, her panel kicked the plaintiffs' claims out of court in an unsigned, unpublished, summary order, giving them only a brief, one paragraph explanation as to why. Moreover, in the course of doing so, she dramatically expanded the Supreme Court's controversial 2005 decision in *Kelo v. New London*. In *Kelo*, the Supreme Court broadened the meaning of "public purpose" that allows the government to take someone's private property. Judge Sotomayor, in the case of *Didden v. Village of Port Chester*, broadened the government's power even further.

Her panel's ruling in *Didden* now makes it easier for a person's private property to be taken for the purpose of conferring a private benefit on another private party. This result is at odds with both the plain language of the fifth amendment's takings clause, and with the Supreme Court's statements in *Kelo*. And, as in Ricci, she did it without providing a thorough analysis of the law. Her panel devoted just one paragraph to analyzing the plaintiffs' important Fifth Amendment claims. It is no wonder then that property law expert Professor Ilya Somin at George Mason University Law School called it "one of the worst property rights decisions in recent years." Professor Richard Epstein at the University of Chicago College of Law called it not only "wrong" and "ill thought out," but "about as naked an abuse of government power as could be imagined."

There is more. Judge Sotomayor has twice ruled that the second amendment